

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6749 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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PARABATBHAI HADABHAI CHAVDA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6749 of 2001
MR HR PRAJAPATI for Petitioner No. 1
MR KT DAVE AGP for Respondent No. 1-3
MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 27/09/2001

ORAL JUDGEMENT

1. By means of filing this petition under Article 226 of the Constitution, petitioner who has been detained by the District Magistrate, Junagadh District, Junagadh, vide order dated July 8, 2001, Annexure A to the

petition, in exercise of powers conferred under sub-section 2 of Section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 ('PBM Act' for short), has challenged the said order of detention and prayed to issue a writ of habeas corpus or any other appropriate writ, order or direction quashing and setting aside the order of detention and prayed to set him at liberty forthwith.

2. The averments made in the petition and the grounds of detention manifest that the petitioner is running a fair-price shop at village Mandalikpur, Taluka Junagadh. On June 29, 2001, when the Police Sub Inspector, Crime Branch, Junagadh was patrolling from Bilkha to Junagadh and was passing through village Palasava, on suspicion, he intercepted a jeep bearing registration No. GJE 5968 and it was found that two barrels, that is, 400 litres of blue kerosene was being transported therein. On inquiry made to the driver of the jeep, it was found that the said kerosene was being transported from the shop of the petitioner to Junagadh for selling it and according to the detaining authority, the said activity of the petitioner amounted to blackmarketing.

3. The said Police Sub Inspector thereafter informed the Civil Supplies Department, Junagadh District and on the said information being conveyed by the Police Sub Inspector, Deputy Mamlatdar (Civil Supplies), Junagadh inspected the shop of the petitioner on June 30, 2001. He recorded the statements of four persons who were having ration cards in the fair-price shop of the petitioner and from their statements it was divulged that the quota of kerosene to be distributed to them for the month of June 2001 was not given to them and on the basis of the said statements, Deputy Mamlatdar made a report to the District Supply Officer and on the basis of that report, the District Magistrate, Junagadh considered the activity of the petitioner in a manner prejudice to the maintenance of supplies of commodities essential to the community and the public at large. Therefore, the District Magistrate, being the detaining authority, found it necessary to detain the petitioner on the grounds stated in the order of detention.

4. Though the petitioner has challenged the order of detention on various grounds, Mr. Prajapati, learned advocate for the petitioner has restricted his arguments on the ground 'o' stated in the petition. According to him, the petitioner has not been supplied with the

material referred to and relied upon by the detaining authority while passing the order of detention. It is stated in para 8 of the grounds of detention that statements of four ration-card holders were recorded who have alleged that the petitioner had not given quota of 12 litres of kerosene to them which was to be distributed to them for the month of June 2001. The detaining authority has therefore relied on the statements of four ration card holders and on the basis of that the detention order was passed.

5. So far as the statement of Damji Bhagwanji Umrethia, at page 121 of the compilation is concerned, he has stated that he has not purchased the ration of kerosene for the month of June 2001. Copy of the ration card of Damji Bhagwanji Umrethia produced on record does not show as to what are the articles he has purchased from the fair-price shop in the month of June 2001. The copy of the ration-card shows details for the months from July 2001 to December 2001. In view of this runs further submission that non-supply of the document referred to in the order of detention by the detaining authority to the detenu has seriously prejudiced the right of the detenu of making effective representation which has violated the Constitutional safeguard enshrined in Article 22 (5) of the Constitution and continued detention has become illegal. Therefore, on this ground, the order of detention is vitiated and the petition deserves to be allowed by quashing and setting aside the order of detention.

6. Mr. K.T. Dave, learned AGP who appears for respondent Nos.1 to 3, has opposed the petition by filing affidavit in reply of one Mr. P.G. Vyas, Deputy Secretary to the Government of Gujarat, Food, Civil Supplies and Consumer Affairs Department, Sachivalaya, Gandhinagar. Ms. Davawala, learned advocate for respondent No.4, has opposed the petition by filing affidavit on behalf of respondent No.4, sworn by Mr. S.L. Meena, Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, New Delhi. Mr. Dave, however does not dispute the facts stated in the statement of Damji Bhagwanji Umrethia, a ration card holder having ration card in the fair-price shop of the petitioner. The witness has specifically stated that he has not purchased the quota of kerosene for the month of June 2001 whereas the detaining authority has supplied the copy of the ration-card in respect of the essential commodities supplied to the said ratio card holder from the month beginning from July 2001 to December 2001. Mr. Dave,

therefore, conceded that copy of the ration card showing non-supply of kerosene to the said ration card holder for the month of June 2001 is not supplied to the detenu. He therefore urged to pass appropriate orders having regard to the settled principles enunciated by the Supreme Court as well as this Court in this regard. Ms. Davawala also submitted that in view of the law laid down by the Apex Court in this regard, appropriate order may be passed.

7. I have considered the submissions advanced by the learned advocates for the parties. I have also perused the averments made in the petition and the documents annexed therewith as well as the impugned order by which the petitioner is detained by the detaining authority.

8. It is true that the detaining authority in para 8 of its order dated July 7, 2001 mentioned about recording of statements of four ration-card holders on July 3, 2001. The allegation made by them is that they have not been supplied the ration of kerosene of 12 litres for the month of June 2001.

9. On having perusal of page 121 of the compilation, which is a copy of the statement of Damji Bhagwanji Umrethia recorded on July 3, 2001, wherein the witness has, inter alia, stated that he has not been supplied the quota of kerosene for the month of June 2001. At page 125, a xerox copy of the ration card of Damji Bhagwanji Umrethia is produced and it shows as to what are the essential commodities supplied to him and the said page is in respect of the months of July 2001 to December 2001. It may be appreciated that in fact the allegation made by the ration-card holder Damji Bhagwanji Umrethia is with respect to non-supply of quota of kerosene for the month of June 2001. Copy of the ration card showing as to what essential articles are supplied to him during the month of June 2001 is not produced on record. Therefore, it can be said that the main and vital document relied on and referred to by the detaining authority in its impugned order of detention has not been supplied to the detenu which has seriously caused prejudice to the right of the petitioner - detenu of making effective representation which is a safeguard enshrined in Article 22 (5) of the Constitution. Therefore, in my view, continued detention of the petitioner has become illegal.

10. Similar question arose before the Supreme Court in the case of Mohd. Zakir v. Delhi Administration and others, AIR 1982 SC 696. In the said case the Supreme Court has held that it is a constitutional mandate which

requires the detaining authority to give the documents relied on or referred to in the order of detention *pari passu* the grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with. It is manifest that question of demanding the documents is wholly irrelevant. The infirmity in this regard is violative of constitutional safeguard enshrined in Article 22 (5) of the Constitution.

11. Applying the principles laid down by the Apex Court in the aforesaid case to the facts of the present case, it is clear that the instant case is identical to the case referred to above. In the present case also, at the risk of repetition, be it stated that the document, that is, copy of the ration card of Damji Bhagwanji Umrethia showing the essential commodities supplied to him for the month of June 2001 is not supplied to the detenu. The allegation made by the said ration-card holder is that he was not supplied the quota of kerosene for the month of June 2001. This allegation is not proved by producing a copy of the ration-card of the said witness showing that in the month of June 2001 quota of kerosene was not supplied to him. Therefore, the document which is a vital and important one and which has been referred to and relied upon by the detaining authority, ought to have been supplied to the detenu and non-supply of the same has adversely affected the right of the petitioner of making effective representation and thereby the constitutional mandate enshrined under Article 22 (5) of the Constitution is violated and, therefore, continued detention of the detenu has become illegal and the petition deserves to be allowed by quashing and setting aside the order impugned and setting the petitioner detenu at liberty forthwith.

12. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention passed against the petitioner - detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if is not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A. M. Kapadia, J.)

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